

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 715 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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JAMNABEN MITHABHAI JERAM

Versus

KRISHNACHANDRA SAGAR OR HIS SUCCESSOR

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Appearance:

MR AS VAKIL FOR MR SB VAKIL for Petitioners  
MR KC SHAH ASSTT.GOVERNMENT PLEADER for  
Respondent No. 1, 2, 3

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CORAM : MR.JUSTICE J.N.BHATT

Date of decision: 02/07/96

ORAL JUDGEMENT

The petitioners herein have questioned legality and validity of the judgment and order dated 29th November, 1986 recorded by the Competent Authority and Deputy Collector, Surat - respondent No.2 herein which came to be confirmed by respondent No.1 Urban Land Tribunal and Secretary, Revenue Department, Government of

Gujarat, in Appeal No. Surat-5 of 1987 dated 9th March, 1989, by filing this petition before this Court under Article 226 and 227 of the Constitution of India.

2. Petitioner No.1 is the widow of deceased Mithabhai Jerambhai, who died on 9.1.1963. Petitioner No.2,3 and 4 are the sons of deceased Mithabhai Jerambhai and the first petitioner Jamnaben.

3. The petitioners filed Statement in Form No.1 under section 6[1] of the Urban Land [Ceiling & Regulation] Act, 1976 ["the ULC Act" for short]. It was filed for the family. Immovable property bearing Survey No. 290/1 was shown as agricultural land owned by the petitioners. Said Form No. 1 was signed by petitioner No. 2.

4. The competent authority had served the petitioners with a notice under section 8 (3) of the ULC Act forwarding therewith a Draft Statement under section 8 of the ULC Act showing that petitioner No. 1 holds 625 square metres of vacant land of survey No. 290/1 in excess of the ceiling limit. After the Draft Statement, the Competent Authority, by his order dated 29th November, 1986 held that the first petitioner is holding 625 square metre of vacant land in excess of the ceiling limits.

5. The petitioners, being aggrieved by the said order passed by the Competent Authority under the ULC Act, preferred appeal before the Urban Land Tribunal and the Secretary, Revenue Department, Government Gandhinagar but without success. The appeal came to be dismissed by the Tribunal. Hence, this petition.

6. There is no dispute about the fact that originally, the property belonged to deceased Mithabhai Jerambhai and the petitioners are the heirs of deceased Mithabhai Jerambhai. The Competent Authority decided the matter without hearing the advocate for the petitioners. No doubt, the date was fixed for hearing on 4 to 5 occasions but the lawyer for the petitioners could not remain present and, therefore, the petitioners could not submit evidence. The matter came to be decided ex-parte on 29th November, 1986 which came to be confirmed by the Tribunal in appeal.

7. There is no dispute about the fact that originally, the property belonged to deceased Mithabhai Jerambhai and after his death, his widow and children are holding the land in question who filed Form No.1 and

claimed share separately and individually. However, the Competent Authority did not accept the claim of the petitioners. It is not in dispute that the day on which the ULC Act came into force, there was undivided hindu family of deceased Mithabhai Jerambhai. Of course, there may be dispute as to who were minors at the relevant time. The joint hindu family is excluded from the definition of family given in section 2(f) of the ULC Act. There is purpose and policy behind it. This Court, in DK Bansara v/s. GR Rao, 1994 (1) GLR pg. 337, has clearly held that all major co-parceners in a undivided hindu family shall be entitled to one separate unit on the date on which the Act came into force. It is also held that the father, mother, major sons and daughters constitute undivided hindu family. In the present case, on the death of Mithabhai Jerambhai, his widow and three sons would constitute family as defined under section 2(f) of the ULC Act. All major members of this family are, therefore, entitled to hold 1 Unit each as a person. However, whether all the three sons were major or not is not proved. Unfortunately, the matter proceeded ex-parte before the Competent Authority and the documentary evidence later on produced could not be proved. In the circumstances, it would be expedient to remand the matter back to the Competent Authority respondent No. 2 herein with a direction to give opportunity to the petitioners of hearing and leading evidence so that they can show as to who were major persons at the relevant point of time.

8. Reliance is also placed on the decision of this Court (Coram : A.N Divecha, J.) in Special Civil Application No. 2117 of 1991, decided on 12-09-1994 in the case of Narendra Manishankar Vyas v/s. Additional Special Secretary in which, this Court has taken a view that the parties should not be allowed to suffer for inaction on the part of the lawyer. In the present case, lawyer for the petitioners did not remained present despite repeated notices to him. Therefore, said decision also supports the submissions raised on behalf of the petitioners.

9. This petition is also covered by the decision in case of Dharmadas (Supra). However, considering the peculiar facts and circumstances of the case, and considering the order passed in Civil Application No. 1243 of 1993, with regard to interim relief, the matter is remanded to the Competent Authority - Respondent No. 2 for fresh inquiry after giving opportunity of hearing to the petitioners in accordance with law and the respondent authorities shall maintain status quo with regard to the lands in question as the possession is

already taken over. The possession in respect of the land in question with the Government will be subject to the final decision in respect of Form No.1 under section 6(1) of the ULC Act. Rule is made absolute in terms indicated hereinabove. No order as to costs.

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Vyas\*